Reserved.

COURT NO.3

Criminal Mis. Application No.195 of 2002.

Sri Amesh Kumar Sharma …….Applicant

Vs.

State of Uttranchal
And another

……Respondents

Hon'ble Irshad Hussain, J.

This petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') has been filed for quashing proceedings in session trial no.59 of 1996, State v. Dr. Hari Prakash Garg and another pending in the court of Special Judge, Anti-Corruption/Sessions Judge, Hardwar.

Heard Sri Vivek Shukla, learned counsel for the applicant and the learned A.G.A. appearing on behalf of the State.

Briefly stated the allegations against the petitioner in the F.I.R. of the case was that in the year 1992 the petitioner in conspiracy with co-accused Dr. Hari Prakash Agarwal, Ayurvedic & Unani Officer, Hardwar, sold 71 bottles of liquid paraffin at the rate of Rs. 70.00 per bottle as against the official rate of Rs.46.00 per bottle and thus cheated the government for a sum of Rs. 1704.00 After investigation charge-sheet was also submitted against the petitioner alongwith co-accused. The offences under which the charge-sheet was submitted are punishable under section 420/120B of I.P.C. and section 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988.

The controversy raised is whether the petitioner could legally be prosecuted for the offence punishable under the provisions of

Prevention of Corruption Act and whether prima facie case of cheating is established against the petitioner. As pointed out by the learned counsel for the petitioner the controversy regarding the prosecution of petitioner for offence punishable under the provisions of Corruption Act is set at rest by the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra v. Laljit Rajshi Shah and others, 2001, Supreme (Cr.), 232,** wherein the principle laid down by the apex court is that a person who is not a public servant cannot be prosecuted for offence under the provisions of Prevention of Corruption Act. It is not in dispute that the petitioner is not a public servant and, therefore the ratio of this decision can safely be applied to the facts of the instant case and the petitioner cannot be prosecuted for offence under the provisions of Prevention of Corruption Act, 1988.

As regards the controversy as to whether prima facie case of cheating and conspiracy is made out against the petitioner, it need to be pointed out at the outset that it is not the case of the complainant or the prosecution that the petitioner had, in any way, deceived or fraudulently or dishonestly induced the Divisional Ayurvedic & Unani Officer to purchase the bottles of liquid paraffin at the rate of Rs. 70.00 per bottle from his shop. It appears that the purchase was made when the fair of Ardh Kumbh was held at Hardwar and that the said medical officer in his discretion decided to purchase the bottles of liquid paraffin at a price which was higher than the rate fixed by the government for purchase of this commodity. From the side of the respondent nothing has been brought on record as may, in any way, justify that there was any dishonest concealment of fact on the part of the petitioner and the medical officer was fraudulently or dishonestly induced to purchase this commodity from his shop only. In the case- **S.W. Palanitkar and others v. State of Bihar and another, (2002) 1 Supreme Court Cases, 241,** it has been held that to make out offence of cheating, fraudulent or dishonest intention on the part of the alleged wrong-doer must be shown to exist at the time of making of inducement. In the instant case neither there is any inducement nor

any proof of fraudulent or dishonest intention on the part of the petitioner and, therefore prima facie offence of cheating and conspiracy is not made out and as such to prosecute the petitioner for such an offence will only be an abuse of the process of the court and the court under inherent powers would be justified to quash the criminal proceedings pending against the petitioner.

In view of above, the petition succeeds. Criminal proceedings in S.T.No.59 of 1996, State v. Dr. Hari Prakash and another, pending in the court of Special Judge, Anti-Corruption/Sessions Judge, Hardwar are hereby quashed as regards the petitioner only.

(Irshad Hussain,J.)

10.04.03./B.